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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 471

GUS HALL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions of the Court of Appeals (R. 240-256) are reported at 198 F. 2d 726. The opinion of the District Court (R. 215-228) is reported at 101 F. Supp. 666.

JURISDICTION

The judgment of the Court of Appeals was entered on August 28, 1952 (R. 257), and a petition for rehearing (R. 258-282) was denied on October 31, 1952 (R. 283). The petition for a writ of cer-

tiorari was filed on November 28, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether petitioner's disobedience of the order of the District Court, which required him to surrender from enlargement on bail after affirmance of his conviction, constituted contempt.

2. Whether the evidence was sufficient to sustain the finding that petitioner knowingly disobeyed an order of the District Court.

STATUTE INVOLVED

18 U. S. C. 401 provides:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
>
> (2) Misbehavior of any of its officers in their official transactions;
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

STATEMENT

On October 31, 1951, the District Court for the Southern District of New York, upon application of the local United States Attorney (R. 4-6), ordered petitioner to show cause why he should not be adjudged guilty of contempt of the court for failure to obey its previously issued "lawful orders

and commands * * * directing him to appear before it on July 2, 1951, and July 3, 1951; requiring him to surrender himself in execution of the judgment and sentence imposed * * *; and requiring him to remain within the jurisdiction of the District Court of the United States for the Southern District of New York, or the District Court of the United States for the Northern District of Ohio" (R. 3). Prior to trial, petitioner was served with "Specifications of Criminal Contempt", in which the offenses were specifically described as (1) petitioner's willful and knowing disobedience of an order of Judge William Bondy, dated November 10, 1949, as a result of his "being without the jurisdiction of the district specified"; and (2) willful disobedience of an order of Judge Ryan, dated July 2, 1951, as a result of his failure to surrender on the latter date, "or at any other time prior to his apprehension at Laredo, Texas, on October 10, 1951" (R. 7-8).[1] Judge Ryan found petitioner guilty of contempt on these two specifications, and sentenced him to three years' imprisonment on each specification, the terms to run concurrently, commencing upon completion of the sentence presently being served for violation of the Smith Act (R. 228, 229-230). On appeal, the judgment of conviction was reversed as to the specification relating to Judge Bondy's order of November 10, 1949, but was affirmed as to the specification based

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[1] A specification relating to disobedience of an order dated April 2, 1951, was dismissed, at the trial, on motion of the Government (R. 12).

upon violation of the order of July 2, 1951 (R. 248, 256, 257). The court below unanimously agreed that willful disobedience of an order to report for surrender is a contempt of court under 18 U. S. C. 401(3), but one judge dissented as to the sufficiency of the evidence to show such willful disobedience.

The evidence on this issue may be summarized as follows:

In 1949, petitioner, together with ten other defendants in the case of *United States* v. *Dennis, et al.*, had been convicted, in the District Court for the Southern District of New York, of a violation of Sections 2 and 3 of the "Smith Act" (now 18 U. S. C. 2385), and sentenced to five years' imprisonment and a fine of $10,000 (R. 42-43). Pending appeal he was enlarged on a $20,000 bail bond, which he posted on November 3, 1949 (Gov. Ex. 4, R. 41, 207-208). The conviction was affirmed by this Court (341 U. S. 494) on June 4, 1951 (R. 42-43). On June 22, 1951, Mr. Justice Jackson denied petitioner's application for a stay of this Court's mandate (R. 43).

On June 24, 1951, at Cleveland, Ohio, petitioner, in addressing a gathering at a farewell banquet given him "in honor of", as the invitations stated, "one of the 11 whose conviction was upheld by the Supreme Court's infamous decision", repeatedly referred to the fact that "he was going to prison" (R. 45-52, 54-57; Gov. Ex. 7, R. 57, 211).[2]

[2] At the banquet, documents described as "Peace Bonds" and intended as tickets of "admission to a banquet when Gus Hall comes out of prison", were sold at $10 each (R. 50).

On Thursday, June 28, 1951, petitioner's counsel accepted service of a proposed "order on mandate", requiring petitioner personally to surrender to the United States Marshal for execution of his sentence, together with "notice" that such order would "be presented for settlement and signature" on Monday, July 2, 1951, at 10 a.m. (R. 61-62; Gov. Ex. 2, R. 40, 200-204).[3] On the afternoon of June 29, petitioner's counsel appeared before Judge Ryan in connection with his motions relating to the sentences imposed on two of the defendants in the *Dennis* case (R. 27-28). At that time, because this Court's mandate had not been filed, the court refused the Government's request that the court "make a direction that the defendants appear at a certain time on Monday" [July 2] (R. 27, 28). The court, referring to the proposed orders, stated that "the matters will all come up on Monday" (R. 59, 28). Petitioner's counsel told the court, "You have my word that all of these defendants will be here at that time" (*id.*). Later that day, counsel personally informed petitioner that his presence in court would be required on July 2 and was "assured" by petitioner that he would be present (R. 60-61).

On July 2, 1951, petitioner failed to appear (R. 86-87). On that day, Judge Ryan signed the order on mandate, ordering petitioner, among others, personally to "surrender to the United States Mar-

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[3] On June 28, 1951, a copy of the same proposed order and notice of settlement was served on the respective counsel for each defendant in the *Dennis* case (Gov. Ex. 2, R. 40, 200-204).

shal for the Southern District of New York * * * at 11:05 o'clock in the forenoon of that day" (Gov. Ex. 2, R. 40, 202-203, 88). Later that day, the court issued a bench warrant, which the marshal was unable to execute because petitioner could not be located at the address given by him on his bail bond (R. 87, 90-91; Gov. Ex. 5, R. 42, 209-210).

On the morning of June 30, 1951, petitioner, carrying two suitcases and some clothing, had left the Bronx apartment which he had occupied for two preceding months, and driven away in an automobile (R. 64-65, 68-71). At that time petitioner had light hair and a mustache (R. 66-67).

On October 10, 1951, petitioner was apprehended by an F. B. I. agent at Laredo, Texas (R. 96, 97). In response to the agent's statement that he was being arrested upon a warrant issued in New York as a result "of his failure to appear to start serving his sentence", petitioner stated, "Yes, I understand" (R. 97). At the time of arrest, petitioner was without a mustache and his hair was dyed dark brown (R. 96-97, 119).

Petitioner did not testify in his own behalf.

ARGUMENT

1. Petitioner admits that, under the literal language of 18 U. S. C. 401 specifying as contempt of court the "disobedience or resistance to its lawful writ, process, order, rule, decree or command", disobedience of any order, including an order to surrender for execution of sentence, would constitute contempt of court (Pet. p. 13). He argues,

however, that, since outlawry was the punishment for absconding at common law, the contempt statute should not be interpreted as reaching disobedience of an order to submit for execution of sentence.

However, petitioner was convicted, not of "bail jumping", but of disobedience of a specific order to surrender himself from liberty on bail for execution of sentence. This is very different from merely absconding while on bail. Since the theory of bail originally was that the prisoner was in the custody of his bail rather than of the sheriff, the act of absconding was escape from custody and not a violation of a specific order. Cf. 2 Pollock and Maitland, *History of English Law,* 580-584. Normally there is not even now a specific court order requiring a defendant to appear for trial after he has been enlarged on bail. A defendant is released until his case is called for trial. If he does not appear, his bond is defaulted. The common law recognized the additional penalty of outlawry, but such proceedings in criminal cases were confined to fugitives from justice before trial or conviction. 2 Pollock and Maitland, *History of English Law,* 579-582; 3 Holdsworth, *History of English Law,* 604-606. Bail after conviction pending appeal became general only in recent times [4] and it was only

[4] In England in the period prior to and immediately after the American Revolution, bail was not granted after conviction. *Rex* v. *Wilkes*, 4 Burr. 2527, 2542 (1770), *Rex* v. *Brooke*, 2 Term Rep. 190 (1788). Statutory provision for such bail was not provided until the middle of the nineteenth century. 8 & 9 Vict. c. 68 (1845).

then that occasion would normally arise for a specific order by the court requiring a defendant to submit himself for execution of sentence. The common law thus furnishes no guide to the situation presented in the instant case.

There is no reason why the statute should not be applied according to its plain words. The order to submit for execution of sentence in this case is as formal an order as an injunction order or a subpoena. Certainly a willful disobedience of such an order is as much an affront to the dignity of the court as a willful refusal to obey an injunction or to appear pursuant to a subpoena. If similar disobedience of similar formal orders has not hitherto been punished, the simple answer is that it could and should have been. Where certain conduct comes within a statutory definition of contempt, it is immaterial that such contempt is novel or unusual, for the absence of precedent will not preclude an act from being held to be contempt. See *State* v. *Albin,* 118 Ohio St. 527, 161 N. E. 792; *Silverman* v. *Seneca Realty Co.,* 154 Misc. 35, 276 N. Y. S. 466; *Dollard* v. *Koronsky,* 67 Misc. 90, 121 N. Y. S. 987, affirmed, 138 App. Div. 213, 123 N. Y. S. 11, affirmed, 199 N. Y. 558, 93 N. E. 119. Cf. *Arizona Employers Liability Cases,* 250 U. S. 400, 419.

2. The disagreement in the court below was not as to the power to punish, but as to whether the evidence was sufficient to sustain the finding of the trial court that petitioner had knowledge of the

order of July 2, 1952, for disobedience of which he was convicted.

We submit that the majority view that the evidence was sufficient is sound. The dissenting opinion admits that petitioner must have known "on June 29 that an order requiring him to appear on July 2 for execution of his sentence might be made by Judge Ryan on July 2" (R. 252). We think the evidence is clear that petitioner knew that an order for execution of sentence would be made. He knew that his last judicial remedy was exhausted; on June 24 he knew that he must go to jail (see p. 4, *supra*). He also knew that he was expected to appear in court on July 2 (see p. 5, *supra*). The trial court properly inferred from the service of the proposed order and notice of settlement upon petitioner's attorney, and from the attorney's testimony that he had talked with petitioner and told him of his duty to appear on July 2, that the attorney had brought the proposed order to petitioner's attention and advised him of the reason for his required appearance. 2 Wigmore, *Evidence* (3d ed.) Secs. 285, 288, 289. Petitioners thus knew that he was going to be ordered to jail. When he absconded, he intended to place himself in a position to defy any order of the court requiring him to go to jail. He was thus properly punished for disobeying a known order of the court. His knowledge of the approaching events and his intent to avoid their consequences, were continuing, when, in the regular course of events, the order for his surrender actually issued on July 2, 1951. Cf.

Pettibone v. *United States,* 148 U. S. 197, 207-208; *In re Rice,* 181 Fed. 217 (C. C. M. D. Ala.); *United States* v. *Day,* 25 Fed. Cas. No. 14,934, pp. 793, 795 (C.C.D.N.J.). His punishment is commensurate with his actual intention.[5]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WALTER J. CUMMINGS, JR.,
Solicitor General.
CHARLES B. MURRAY,
Assistant Attorney General.
BEATRICE ROSENBERG,
EDWARD S. SZUKELEWICZ,
Attorneys.

JANUARY 1953.

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[5] Petitioner's contention (Pet. 5-11, 37-39) that there was prejudicial variance between the offense charged and the offense proved is without substance. The trial court did not adjudge petitioner guilty of contempt on the basis of any order of June 29, 1951. The events occurring prior to July 2, 1951, were merely circumstances which properly permitted inferences that petitioner intended to disobey the order which he knew would be entered on July 2, 1951. The trial court's findings were that, "The circumstances and the uncontroverted evidence presented lead only to the conclusion that the defendant's flight from New York City in the morning of June 30, 1951, was to wilfully make himself a fugitive and to contumaciously disobey an order of imprisonment" (R. 225). The majority opinion below is to the same effect.

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IN THE

Supreme Court of the United States

October Term—1952

No. 471

GUS HALL,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY MEMORANDUM

The Government does not, as indeed it cannot, overcome the impressive body of evidence which petitioner adduced at pages 13-34 of his petition to support the thesis that: The Congressional intent, in enacting the Act of March 2, 1831 (4 Stat. at L. 487, chap. 99) and the subsequent contempt statutes derived therefrom, was to confine the contempt power of the inferior Federal courts within the limits of its exercise at common law; and since a contumaciously absconding defendant was not subject to punishment in contempt proceedings at common law, he is not so punishable under the present contempt statute (18 U. S. C. A., § 401(3)). The Government has sought, however, to explain away the absence of common law prece-

dent on the theory that a situation comparable to the one which arose in the instant case could not arise at common law. Its argument runs as follows: "In England in the period prior to and immediately after the American Revolution, bail was not granted after conviction" (G. B., p. 7, fn. 4). Since it would only be after conviction that "occasion would normally arise for a specific order by the Court requiring a defendant to submit himself for execution of sentence" (G. B., pp. 7-8), "the common law thus furnishes no guide to the situation presented in the instant case (G. B., p. 8); from which it is concluded that outlawry proceedings "in criminal cases were confined to fugitives from justice before trial or conviction" (G. B., p. 7).

The trouble with the Government's contention is that it has no foundation in fact. Indeed, it is refuted by the very case which is cited to support it, namely, *Rex* v. *Wilkes,* 4 Burr. 2527. For the facts in that case, as recited at page 2529, show that the defendant, Wilkes, was outlawed *after* conviction *because of his non-appearance for execution of sentence*:

> "Verdicts were found against him (Wilkes) upon both informations (for publication of seditious and obscene libels): after which, judgment was duly signed against him, in each cause; and writs of capias were awarded and issued against him, as in ordinary cases of convictions upon informations for misdemeanors. —Upon his non-appearance, the proceedings were carried on to proclamation and exigents: and upon his not appearing on the 5th time of being exacted, he was, by the judgment of the coroners of the county of Middlesex, according to the law and custom of the realm, outlawed."

That outlawry was as much of a commonplace *after* conviction as it was *before* conviction, is attested by Lord

Mansfield, who, in the *Wilkes* case, wrote at page 2559 that the precedents had "not distinguished between the manner of proceeding to outlaw in criminal cases, before and after conviction."

If outlawry was resorted to after conviction, it was precisely because, contrary to the Government's assertion, convicted defendants *were* in cases regarded as appropriate, admitted to bail pending either sentence or appeal. This, too, is attested by Lord Mansfield, who wrote at page 2539 of the *Wilkes* case:

> "After conviction, if he (Wilkes) had been present in Court, he might have been committed: if not present, he might have been taken by a capias.
>
> *"It is, indeed, in the discretion of the Court, to bail a person so circumstanced."* (Italics supplied.)*

What the Government fails to grasp is that it was precisely *the contumacious and contemptuous absconder,* whether before or after conviction, that outlawry proceedings were designed to reach and punish at common law. In the words of Pollock and Maitland, which are quoted at pages 22-23 of the petition herein, outlawry, beginning with the 13th century, became "an engine for compelling the contumacious to abide the judgment of the courts." And in *Rex* v. *Wilkes, supra,* it was said at page 2533: "* * * in misdemeanor, the outlawry does not enure as a conviction for the offence (as it does in cases of treason and felony), but as *a conviction of the contempt for not answering."* (Italics supplied.) That the office of outlawry was to reach and punish only the contumacious and contemptuous, is further emphasized by the relief that was extended to the non-contumacious when they were caught in its net. This is described as follows in 2 Pollock and Maitland, *The History of English Law,* 581:

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* *Rex* v. *Wilkes,* 4 Burr. 2527, was decided in 1770.

> "There were all manner of cases in which a man might be outlawed without being guilty of any crime or any intentional contumacy. The exaction might, for example, take place in a county distant from his home. There was therefore great need for royal writs in lawing an outlaw and many were issued; but no strict line could here be drawn between acts of justice and acts of grace."

The absence of common law precedent for the punishment of absconders in contempt proceedings cannot, as we have seen, be explained on the untenable grounds urged by the Government. There can be no doubt that it is to be explained as the manifestation of a deliberate policy to withhold from the courts the power of summary trial and punishment of absconders in contempt proceedings. The common law requirement that a contumacious absconder be exacted five times before outlawry, is eloquent indication that the policy of the law was to give the absconder time and opportunity for repentance. For, as is observed in 2 Pollack and Maitland, op. cit., 581, the requirement of five exactions permitted the absconder to "remain contumacious for some five months without being put outside the peace."* Contempt at common law, however, was conduct that was immediately and summarily punishable. The quotation from Storrs in the Peck Case at page 20 of the petition herein may appropriately be recalled here: "*Contempt* was a *crime* at common law, and the mode of punishing it chiefly distinguished it from others—it being the only public offence punishable summarily by attachment, fine and imprisonment * * *." The conclusion, it seems to us, is inescapable that, at common law, the flight of an absconder, however contumacious or contemptuous, was not an act

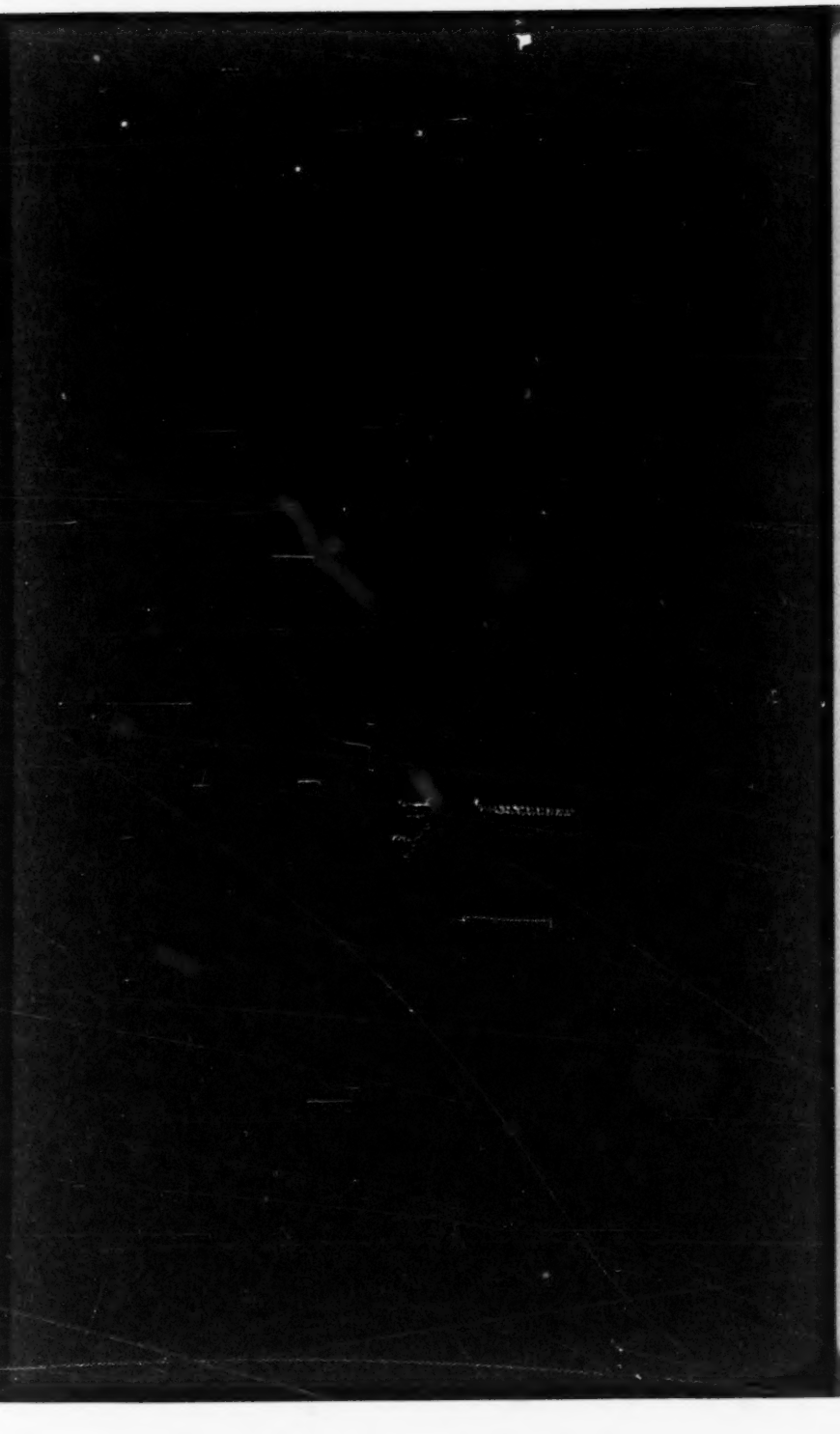
* The quotation at page 23 of the petition herein from 1 Pollock and Maitland, op. cit., 539, indicates the absconder might remain contumacious for as long as 2½ years without being put outside the peace.

summarily punishable in contempt proceedings; it was punishable only in outlawry proceedings, and then only if the defendant failed to surrender before the fifth exaction. To hold now that such conduct is summarily punishable in contempt proceedings is to frustrate the purpose with which Congress enacted the Act of March 2, 1831, *i.e.*, to prevent the summary punishment of conduct in contempt proceedings which was not so punishable at common law (Petition herein, pp. 26-31).

It is unnecessary to reply to the remainder of the Government's argument for it has not met petitioner's contention that the Court of Appeals sustained his conviction on the ground of his disobedience of an order of which he had not been accused, tried or convicted in the District Court, and which the record conclusively shows had not in fact been made.

Respectfully submitted,

HARRY SACHER,
Counsel for Petitioner.



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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 522

UNITED STATES OF AMERICA, PETITIONER

v.

GUS HALL

CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

On November 28, 1952, respondent Hall filed a petition for a writ of certiorari (No. 471) seeking review of the judgment of the Court of Appeals for the Second Circuit insofar as it affirmed his conviction on one of two specifications of criminal contempt. A brief in opposition to Hall's petition has been filed by the Government.

The Solicitor General, on behalf of the United States, prays that in the event, but only in the event, the petition for a writ of certiorari in No. 471 is granted, the Court also issue a writ of certiorari to review the judgment below insofar as it

reversed Hall's conviction for contempt on the remaining specification on which a concurrent sentence was imposed. The certified transcript of record filed in No. 471 includes those portions of the record upon which this cross-petition is based.

OPINIONS BELOW

The majority and dissenting opinions of the Court of Appeals (R. 240-256) are reported at 198 F. 2d 726. The opinion of the District Court (R. 215-228) is reported at 101 F. Supp. 666.

JURISDICTION

The judgment of the Court of Appeals was entered on August 28, 1952 (R. 257). Hall's petition for rehearing (R. 258-282) was denied on October 31, 1952 (R. 283). The Government did not file a petition for rehearing.[1] On November 28, 1952, the time within which to file this cross-petition for a writ of certiorari was extended by Mr. Justice Jackson to and including December 30, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

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[1] Since the judgment was one of affirmance, although reversing as to one of two counts on which concurrent sentences were imposed, the Government could not seek review, except as incidental to this Court's review on respondent's application. For this reason, we believe that the recent decision of this Court in *Federal Trade Commission* v. *Minneapolis-Honeywell Regulator Co.*, No. 11, this Term, decided December 22, 1952, does not affect the timeliness of this petition. We regard this conditional cross-petition as in essence an additional ground for affirmance of the judgment below.

QUESTION PRESENTED

Whether an order amending the condition of a bail bond to permit only a specific departure from the jurisdiction was an order of the court, willful disobedience of which constitutes contempt of court.

STATUTE INVOLVED

18 U.S.C. 401 provides:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
>
> (2) Misbehavior of any of its officers in their official transactions;
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

STATEMENT

On October 31, 1951, the District Court for the Southern District of New York, upon application of the local United States Attorney (R. 4-6), ordered respondent to show cause why he should not be adjudged guilty of contempt of court for failure to obey its previously issued "lawful orders and commands * * * directing him to appear before it on July 2, 1951, and July 3, 1951; requiring him to surrender himself in execution of the judgment and sentence imposed * * *; and requiring him to remain within the jurisdiction of the District

Court of the United States for the Southern District of New York, or the District Court of the United States for the Northern District of Ohio" (R. 3). Prior to trial, respondent was served with "Specifications of Criminal Contempt", in which the offenses were specifically described as (1) respondent's willful and knowing disobedience of an order of Judge William Bondy, dated November 10, 1949, as a result of his "being without the jurisdiction of the districts specified"; (2) willful disobedience of an order of Judge Ryan, dated July 2, 1951, as a result of his failure to surrender on the latter date, "or at any other time prior to his apprehension at Laredo, Texas, on October 10, 1951" (R. 7-8).[2] Judge Ryan found respondent guilty of contempt on these two specifications and sentenced him to three years' imprisonment on each specification, the terms to run concurrently, commencing upon completion of the sentence presently being served (R. 228, 229-230). On appeal, the judgment of conviction was reversed as to the specification relating to Judge Bondy's order of November 10, 1949, but was affirmed as to the order of July 2, 1951 (R. 248, 256, 257).

The evidence adduced by the Government, respecting the specification of contempt of Judge Bondy's order, may be summarized as follows:

In 1949, respondent, together with ten other defendants in the case of *United States* v. *Dennis*,

[2] A specification relating to disobedience of an order dated April 2, 1951, was dismissed, at the trial, on motion of the Government (R. 12).

et al., had been convicted, in the District Court for the Southern District of New York, of a violation of Sections 2 and 3 of the "Smith Act" (now 18 U.S.C. 2385), and sentenced to five years' imprisonment and $10,000 fine (R. 42-43).

Pending appeal, he was enlarged on a $20,000 bail bond, which he posted on November 3, 1949 (Gov. Ex. 4, R. 41, 207-208). The bond was conditioned as follows (*id.*):

> Now, the conditions of this recognizance are such, that if the said Gus Hall * * * shall appear either in person or by attorney in the United States Court of Appeals for the Second Circuit when said cause is reached for argument or when required by law of rule of said United States Court of Appeals and from day to day thereafter in said United States Court of Appeals until said cause is finally disposed of, and shall abide by and obey all orders made in said cause and shall surrender himself in execution of the judgment and sentence appealed from upon such day as the District Court of the United States for the Southern District of New York may direct, if the judgment and sentence appealed from shall be affirmed, and shall appear before the District Court of the United States for the Southern District of New York on such day or days as shall be set for a retrial of said case, provided the judgment of the District Court of the United States for the Southern District of New York is reversed by the said United States Court of Appeals; and shall not depart

> the jurisdiction of the District Court of the United States for the Southern District of New York without leave, then this recognizance to be void, otherwise to remain in full force, virtue and effect.
>
> And we, the undersigned Principal and Surety, do hereby STIPULATE, AGREE, AND CONSENT, that in case the aforesaid Recognizance shall be forfeited judgment may be entered for the sum set forth in said Recognizance, and that execution issue thereon according to law.

On November 4, 1949, respondent, together with some of his co-defendants, applied to the District Court for the Southern District of New York for leave to enlarge the limits of his bail by permitting him to depart from that district "to his place of residence to be with his family and to take care of his affairs" (Gov. Ex. 1, R. 40, 198-199). On November 10, 1949, Judge Bondy granted the request by issuing the following order (Gov. Ex. 1, R. 40, 195-197):

> It appearing that Gus Hall [et al.] are defendants-appellants in the above-entitled case and presently under bond * * *, which bond *inter-alia* is conditioned upon each of said defendants-appellants remaining within the jurisdiction of the Southern District of New York, and it further appearing that each of said defendants-appellants resides outside of the Southern District of New York and is desirous of returning to the Federal District in which his home is located, to wit:

Gus Hall
1708 West 31st Place
Cleveland, Ohio

Northern District
of Ohio

* * * * *

to be with his family and to take care of his affairs, it is hereby

Ordered that each of said defendants-appellants, Gus Hall [et al.] is hereby given permission to depart from the Southern District of New York upon the following express conditions and subject in all other respects to the conditions of the bonds aforesaid: That he may depart from the Southern District of New York and go to the Federal District in which his home is located to be with his family and attend to his affairs temporarily; that he will return to the Southern District of New York whenever ordered by this Court so to do; that in case he removes from his present home or changes his address, he shall forthwith inform the United States Attorney for the Southern District of New York to that effect; that Robert W. Dunn, who executed the bail bond for each of the defendants-appellants hereinabove named, shall give his written consent to the making and entry of this order; and that Robert W. Dunn, Frederick V. Field, Dashiell Hammett, W. Alphaeus Hunton and Abner Green, Trustees of the Bail Fund of the Civil Rights Congress of New York, shall give their written consent to the making and entry of this order, and it is further

Ordered that for any violation of any of the

conditions hereinabove named by any of said defendants-appellants the bond of such defendant-appellant shall be forfeited.[3]

The conviction under the Smith Act was affirmed by this Court (341 U. S. 494) on June 4, 1951 (R. 42-43). On June 22, 1951, Mr. Justice Jackson denied respondent's application for a stay of this Court's mandate (R. 43).

On June 28, 1951, respondent's counsel accepted service of a proposed "order on mandate", requiring respondent personally to surrender to the United States Marshal for execution of his sentence, together with "notice" that such order would "be presented for settlement and signature" on July 2, 1951, at 10 a. m. (R. 61-62; Gov. Ex. 2, R. 40, 200-204).[4]

On June 29, 1951, respondent was personally informed by his counsel that his presence in court would be required on July 2, and he "assured" his counsel that he would be present (R. 60-61).

On the morning of June 30, 1951, respondent, carrying two suitcases and some clothing, had left the Bronx apartment, which he had occupied for two preceding months, and had driven away in an automobile (R. 64-65, 68-71). At that time he had light hair and a mustache (R. 66-67).

On October 10, 1951, respondent was appre-

[3] The surety and the trustees of the bail fund named in the order consented to its entry by affixing their signatures thereto (R. 197).

[4] On June 28, 1951, a copy of the same proposed order and notice of settlement was served on the respective counsel for each defendant in the *Dennis* case (Gov. Ex. 2, R. 40, 200-204).

hended by an F. B. I. agent, at Laredo, Texas (R. 96, 97). In response to the agent's statement that he was being arrested upon a warrant issued in New York as a result "of his failure to appear to start serving his sentence", respondent stated, "Yes, I understand" (R. 97). At the time of arrest, respondent was without a mustache and his hair was dyed dark brown (R. 96-97, 119).

Respondent did not testify in his own behalf.

REASONS FOR GRANTING THE WRIT

1. Petitioner received concurrent sentences on the two specifications of contempt. The affirmance of one of these specifications by the Court of Appeals is the basis of respondent's petition for certiorari in No. 471, in which his contention is that he did not have any knowledge of the existence of the order involved, and, furthermore, that disobedience of the order does not fall within the statutory definition of contempt. For the reasons set forth in our brief in opposition, the Government is of the view that the petition in No. 471 raises no questions warranting review by this Court. If the Court should determine that the petition in No. 471 should be denied, this conditional cross-petition, involving the specification reversed by the court below, need not be considered. It is filed solely to protect the Government's interest in the event that certiorari should be granted in No. 471. In that event, it would be appropriate, in view of the interrelationship of the questions presented

by both petitions, for the Court to have the entire case before it.

2. The Court of Appeals' reversal of Hall's conviction for contempt of Judge Bondy's order of November 10, 1949, was based on the ground that such order contained no express directive which was violated by Hall's departure beyond the limits defined in the order. The court held that Judge Bondy's order was no more than a directive for the enlargement of the conditions of the bail bond, and that "The subordinate clauses which follow this directive are to be interpreted merely as setting out the purposes for which this enlargement was permitted—such as Hall's journey to Cleveland—and its subsequent conditions, including the required approval of his surety" (R. 245).

We submit that the court below erroneously interpreted the scope and purpose of Judge Bondy's order. Respondent had invoked the order in accordance with the provision of his bail bond which forbade his leaving the jurisdiction of the Southern District of New York "without leave" of court. The order, although permissive to the extent that it granted respondent leave "to depart from the Southern District of New York", contained a counteracting directive in that the permission was granted upon several "express conditions", one of which was "that he will return to the Southern District of New York whenever ordered by this Court so to do" (*supra*, p. 7). Read in the light of the circumstances under which it was sought

and the purpose for which it was made, the order is clear and specific in its terms, leaving no doubt or uncertainty in the minds of those to whom it is addressed. See *McFarland* v. *United States,* 295 Fed. 648, 650 (C.A. 7); cf. *Terminal Railroad Ass'n. of St. Louis* v. *United States,* 266 U. S. 17, 29. Thus, we submit that the court below erred in treating Judge Bondy's order as a mere relaxation of the original terms of the bail bond. Cf. *Terminal Railroad Ass'n. of St. Louis* v. *United States, supra.* The order, granted within the exercise of discretionary power in the regulation of respondent's bail limits, was a lawful order of the court. It was as formal an order as an injunction order or subpoena. Certainly a willful disobedience of such an order is as much an affront to the dignity of the court as a willful refusal to obey an injunction or to appear pursuant to a subpoena. Cf. *United States* v. *United Mine Workers,* 330 U. S. 258, 303; *Denver-Greeley Valley Water Users Ass'n.* v. *McNeil,* 131 F. 2d 67, 69 (C.A. 10).

Furthermore, we submit that the court below erred in holding that Judge Bondy's order, which specified forfeiture of the bail bond as a penalty for violation of any provision thereof, prescribed an exclusive sanction for its violation. Clearly, the forfeiture provision was inserted in the order to prevent the release of the sureties which might result from a change or extension of any condition of the bail bond. Cf. *Reese* v. *United States,* 9

Wall. 13. The fact that an act constituting criminal contempt may make the contemnor guilty of another offense or subject him to some other sanction, does not render him immune from punishment for contempt. Cf. *United States* v. *Field*, 193 F. 2d 92, 95, 96 (C.A. 2), certiorari denied, 342 U. S. 894; *United States* v. *United Mine Workers of America*, 330 U. S. 258, 289-295.

CONCLUSION

For the reasons stated, it is respectfully submitted that this cross-petition for a writ of certiorari should be granted if the petition in No. 471 is granted.

WALTER J. CUMMINGS, JR.,
Solicitor General.

DECEMBER, 1952.

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IN THE

Supreme Court of the United States

October Term—1952

No. 522

THE UNITED STATES OF AMERICA,

Petitioner,

vs.

GUS HALL,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

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IN THE

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No. 522

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

GUS HALL,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

Opinions Below

The majority and dissenting opinions of the Court of Appeals (R. 240-256) are reported at 198 F. 2d 726. The opinion of the District Court (R. 215-228) is reported at 101 F. Supp. 666.

Jurisdiction

The judgment of the Court of Appeals was rendered August 28, 1952 (R. 257), and a petition by the respondent for a rehearing on that part of the judgment which affirmed the judgment of the District Court (R. 258-282) was denied on October 31, 1952 (R. 283). The Government did

not file a petition for rehearing in respect to that portion of the judgment of the Court of Appeals which reversed part of the judgment of the District Court (R. 259-260). On November 28, 1952, an order was made by Mr. Justice JACKSON extending the time of petitioner to file a petition for writ of certiorari to and including December 30, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Question Presented

Whether a defendant who is at large on bail and is permitted by order of the Court to depart its jurisdiction on certain enumerated conditions, in addition to those contained in his bond, may be punished for contempt for the violation of any of said conditions, where the order contains no express command directing him to comply with the conditions and expressly provides that for violation of any of said conditions the bond of the defendant shall be forfeited?

Statute Involved

18 U. S. C. 401 provides:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
>
> (2) Misbehavior of any of its officers in their official transactions;
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

POINT I

The petition does not set forth adequate reasons for granting the writ.

A reading of Judge BONDY's order (R. 195-197) in light of the purposes for and the circumstances in which it was made demonstrates that the Court of Appeals correctly disposed of the count based on the alleged violation thereof, and that there is no substance to the question presented by the petitioner. Concerning Judge BONDY's order, the Court of Appeals wrote as follows (R. 243-245):

> "* * * This court, on November 2, 1949, had ordered the respondent's release from custody pending appeal upon the posting of a bond in the amount of $20,000. The bond was filed the next day and, in addition to the usual provisions for appearance and surrender for execution of sentence when required, was specifically conditioned that Hall 'shall not depart the jurisdiction of the District Court of the United States for the Southern District of New York without leave.' Shortly thereafter respondent applied to Judge Bondy for permission to depart the jurisdiction in order to 'take care of his affairs' at his home in the Northern District of Ohio, which was granted in an order quoted in pertinent parts in the footnote. As will be noted, this order recites the just-quoted condition of the bond and then, after granting the requested permission, subject to specified conditions (including return when ordered), provides that for any violation of the conditions the respondent's bond shall be forfeited.
>
> "The court below read the order as incorporating the promises of the bond, including those to surrender for execution and not to depart the jurisdictions. We think this error, for we find no plain

violation, considering the purposes for which the former was drawn, *Terminal Railroad Association of St. Louis* v. *United States*, 266 U. S. 17, 29; and of course no contempt attaches merely to a failure to satisfy the guaranties of reappearance in the bond. A fair reading of the order discloses that it was directed to the enlargement of the respondent. The subordinate clauses which follow this directive are to be interpreted merely as setting out the purposes for which this enlargement was permitted—such as Hall's journey to Cleveland—and its subsequent conditions, including the required approval of his surety. Moreover, the order plainly specifies its own sanction, namely, forfeiture of the bond. In view of this, to construe it as a direct mandate to return on penalty of conviction for contempt requires some little adjustment of phraseology which, to support a conviction of contempt, we think improper."

Not only does the petition fail to disclose any substantial question, but it makes no showing of the "special and important reasons" for review which are required by Paragraph 5 of Rule 38 of the Rules of this Court. The suggestion that there is an "interrelationship of the questions presented" by the petition herein and that filed in No. 471 is unfounded (Petition, pp. 9-10). Indeed, one has but to read the Government's versions of the questions presented in each of the petitions to perceive that there is no relationship between them.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the cross-petition for a writ of certiorari should be denied.

Respectfully submitted,

HARRY SACHER,
Counsel for Respondent.